U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN G. DONOVAN and U.S POSTAL SERVICE,
POST OFFICE, Englewood, Colo.

Docket No. 96-394; Submitted on the Record;
Issued July 7, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained greater than a 10 percent permanent impairment of the left arm for which he received a schedule award.

On December 20, 1993 appellant, then a 42-year-old letter carrier, filed an occupational disease claim alleging that he sustained carpal tunnel syndrome of the left wrist. By decision dated December 28, 1993, the Office of Workers' Compensation Programs accepted appellant's claim.

Appellant underwent surgery on his left wrist on March 1, 1994.

The record shows that appellant returned to regular duty with no restrictions on May 16, 1994.

In a report dated February 1, 1995, Dr. Joseph F. Serota, a Board-certified plastic surgeon, indicated that appellant had reached maximum medical improvement on that date and that he had a 20 percent permanent impairment of the left arm due to decreased strength based on Table 23 in the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (3d ed., rev. 1990) (hereinafter the A.M.A., *Guides*).[1] He noted that appellant had an 8 percent permanent impairment due to sensory deficit, pain or discomfort based on Tables 10 and 14 of the A.M.A., *Guides*. Dr. Serota stated that appellant had a total permanent impairment of 26 percent of the left upper extremity.

By letter dated February 17, 1995, appellant was referred, along with a statement of accepted facts and copies of medical records, to Dr. David C. Greenberg, a Board-certified

[1] The Board notes that the applicable edition of the A.M.A., Guides at the time of Dr. Serota's February 1, 1995 report was the 4th edition which became effective on November 1, 1993.

orthopedic surgeon, for an examination and evaluation as to the degree of permanent impairment of the left arm.

In a report dated March 14, 1995, Dr. Greenberg provided a history of appellant's condition and findings on examination of the left wrist. He determined that appellant had a 6 percent permanent impairment according to Figure 26 at page 36 of the A.M.A., *Guides* (4th ed. 1993 based on 50 degrees of flexion and 40 degrees of extension of the left wrist and a 4 percent permanent impairment based on Table 15 at page 54 pertaining to impairment of the median nerve below the forearm, for a total permanent impairment of the right upper extremity of 10 percent.

In a memorandum dated March 27, 1995, the district medical adviser opined that appellant had a 10 percent permanent impairment of the left arm based on Dr. Greenberg's report. He stated that Dr. Serota's report was less detailed and used the 3rd edition, revised of the A.M.A., *Guides* and was therefore entitled to less weight.

By decision dated March 30, 1995, the Office granted appellant a schedule award for 31.20 weeks based on a 10 percent permanent impairment of the left arm.

By letter dated April 10, 1995, appellant requested a review of the written record and submitted additional medical evidence.

In a memorandum dated June 30, 1995, an Office medical adviser, who had reviewed Dr. Serota's and Dr. Greenberg's reports, opined that appellant had a 10 percent permanent impairment of the left upper extremity due to entrapment neuropathy involving the median nerve and that no additional impairment was allotted for loss of grip strength. He based his opinion on Table 16 at page 57 of the 4th edition of the A.M.A., *Guides*.

By decision dated August 14, 1995, the Office hearing representative affirmed the Office's March 30, 1995 decision on the grounds that the weight of the medical evidence rested with the report of Dr. Greenberg.

By letter dated October 11, 1995, appellant requested reconsideration of the schedule award decision.

In a report dated February 1, 1995, but apparently prepared at a later date[2] because the 4th edition of the A.M.A., *Guides* was used rather than the 3rd edition used in the original report dated February 1, 1995, Dr. Serota stated that appellant had a 20 percent impairment due to decreased strength based on Table 34 at page 65 of the 4th edition of the A.M.A., *Guides* and an 8 percent permanent impairment due to loss of function from sensory deficit, pain or discomfort based on Table 11 at page 48 and Table 15 at page 54 for a total combined permanent impairment of the left upper extremity of 26 percent.

[2] The record shows that this second report was received by the Office on October 16, 1995.

By decision dated October 23, 1995, the Office denied modification of its schedule award decision.

The Board finds that appellant sustained no greater than a 10 percent permanent impairment for which he received a schedule award.

An employee seeking compensation under the Act[3] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence,[4] including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.[5]

Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[6] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.[7]

Before the A.M.A., *Guides* may be utilized, however, a description of appellant's impairment must be obtained from appellant's attending physician. The Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a "detailed description of the impairment which includes, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment."[8] This description must be in sufficient detail so that the claims examiner and other reviewing the file will be able to clearly visualize the impairment with its restrictions and limitations.[9]

In this case, appellant's attending Board-certified plastic surgeon, Dr. Serota, provided an assessment of appellant's degree of permanent impairment. In a report dated February 1, 1995, he indicated that appellant had a 20 percent permanent impairment of the left arm due to decreased strength based on Table 23 in the 3rd edition of the A.M.A., *Guides.* He noted that appellant had an 8 percent permanent impairment due to sensory deficit, pain or discomfort

[3] 5 U.S.C. §§ 8101-8193.

[4] *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] 5 U.S.C. § 8107(a).

[7] *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6c (March 1995); *see John H. Smith*, 41 ECAB 444, 448 (1990).

[9] *Alvin C. Lewis*, 36 ECAB 595, 596 (1985).

based on Tables 10 and 14 of the A.M.A., *Guides*. Dr. Serota stated that appellant had a total permanent impairment of 26 percent of the left upper extremity. However, Dr. Serota did not use the applicable edition of the A.M.A., *Guides*, the 4th edition.

In a second report dated February 1, 1995 which used the 4th edition of the A.M.A., *Guides*, Dr. Serota stated that appellant had a 20 percent impairment due to decreased strength based on Table 34 at page 65 of the 4th edition of the A.M.A., *Guides* and an 8 percent permanent impairment due to loss of function from sensory deficit, pain or discomfort based on Table 11 at page 48 and Table 15 at page 54 for a total combined permanent impairment of the left upper extremity of 26 percent. However, Dr. Serota did not provide any grip strength measurements to support his determination of a 20 percent loss of strength based upon Table 34. He also did not explain how he arrived at the 8 percent impairment based upon Table 11. The use of Table 11 requires that the physician determine the grade of severity of the sensory deficit or pain and then multiply this percentage by the maximum impairment of the nerve involved (in this case the median nerve in Table 15). Dr. Serota did not provide a grade for the severity of appellant's sensory deficit or pain or a description of the sensory deficit or pain sufficient for another physician to calculate the grade of severity for use with Table 11.

In a report dated March 14, 1995, Dr. Greenberg, a Board-certified orthopedic surgeon and Office referral physician, determined that appellant had a 6 percent permanent impairment based on 50 degrees of flexion and 40 degrees of extension of the left wrist and a 4 percent permanent impairment based on Table 15 at page 54 of the A.M.A., *Guides* (4th ed. 1993) pertaining to impairment of the median nerve below the forearm, for a total permanent impairment of the left upper extremity of 10 percent. Dr. Greenberg correctly calculated the percentage of impairment for the loss of flexion and extension of the wrist but he failed to provide sufficient information to explain how he arrived at the 4 percent impairment based upon Table 15. The use of Table 15 requires that the physician multiply the maximum impairment for the applicable nerve in Table 15 by the percentage of impairment found in Table 11 or Table 12 at pages 48 and 49 (in this case, Table 11 for sensory deficit or pain is applicable). However, Dr. Greenberg did not provide his determination of the grade and percentage of sensory deficit or pain according to Table 11. In a memorandum dated June 30, 1995, an Office medical adviser, who had reviewed Dr. Serota's and Dr. Greenberg's reports, determined that appellant had a 10 percent permanent impairment of the left upper extremity due to entrapment neuropathy involving the median nerve and that no additional impairment was allotted for loss of grip strength. He based his opinion on Table 16 at page 57 of the 4th edition of the A.M.A., *Guides* which allots a 10 percent impairment for a "mild" entrapment neuropathy.

As the Office medical adviser's determination of appellant's impairment is the only medical evidence which complies with the Office's standardized procedures and the A.M.A., *Guides*, the Office properly based its schedule award decision on the Office medical adviser's evaluation. There is no medical evidence of record, correctly based upon the A.M.A., *Guides*, which establishes that appellant had greater than a 10 percent permanent impairment of the left arm.

The decisions of the Office of Workers' Compensation Programs dated October 23, August 14, and March 30, 1995 are affirmed.

Dated, Washington, D.C.
July 7, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member